IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.06.2006

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THE HON'BLE MR.JUSTICE M.JAICHANDREN

Writ Petition No.35688 of 2002

S.Nayagam .. Petitioner

vs.

1. Food Corporation of India
   represented by its Managing Director
   Headquarters,
   16-20, Barakhamba Lane,
   New Delhi 110 001

2. The Zonal Manager (South)
   Food Corporation of India
   Zonal Office
   3, Haddows Road
   Chennai - 600 006

3. The Senior Regional Manager
   Food Corporation of India
   Regional Office
   5/54, Greams Road
   Chennai - 600 006

4. Mr.P.Vijay Amaladoss
   Deputy Manager
   Food Corporation of India
   Zonal Office
   3, Haddows Road
   Chennai - 600 006 .. Respondents

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This Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified Mandamus calling for the records of the respondents relating to the order of the first respondent in proceedings No.A&R/5(29)/2002/765, dated 19.8.2002, and the order of the second respondent in proceedings No.Vig.5(16)/2001, dated 7.12.2001 and quash the same and consequently direct the respondents to retain the petitioner as Assistant Grade-I (General) on par with his junior with all monetary and attendant benefits.

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For petitioner : Mr.K.Doraisami
Senior Counsel for
Mr.Kandavadivel Doraisami
For respondents : Mr.P.D.Adikesavalu for R1 to R3
Mr.C.K.Chandrasekar for R4

O R D E R

This writ petition has been filed for the issuance of a writ of Certiorarified Mandamus calling for the records of the respondents relating to the order of the first respondent in proceedings No.A&R/5(29)/2002/765, dated 19.8.2002, and the order of the second respondent in proceedings No.Vig.5(16)/2001, dated 7.12.2001 and quash the same and consequently direct the respondents to retain the petitioner as Assistant Grade-I (General) on par with his junior with all monetary and attendant benefits.

2. It is the case of the petitioner that he was initially appointed as Assistant Grade III, in the year 1976, in Food Corporation of India. Later, he was promoted as Assistant Grade II, in the year 1988, in recognitio n of his meritorious and sincere service. The petitioner further states that when he was working as Assistant Grade II in the District Office, at Cuddalore, he was holding the post of District Secretary of Food Corporation of India Schedule Caste/Schedule Tribe Employees Welfare Association. As such, he was instrumental in bringing to the knowledge of the concerned authorities the illegal enjoyment of the benefits by some persons by producing false certificate as though they belonged to Schedule Caste/Schedule Tribe. In this connection it became necessary for the petitioner to make a complaint against Mr.P.Vijay Amaladoss, the fourth respondent herein, who was working as Assistant Manager (Accounts) in the same Office. Since he was a Christian, he was not eligible to avail the benefits, which are given only to the persons who are belonging to Schedule Caste community. On the basis of the complaint made by the petitioner, the District Collector of Thanjavur, by letter No.59942/84, dated 16.8.1984, had stated that the fourth respondent got converted to Hindu religion only for availing the benefits, which were available only to the Schedule Caste/Schedule Tribe. The fourth respondent joined as a District Manager of Food Corporation of India, Cuddalore, on 24.6.1999. Thus he became the superior Officer of the petitioner. The petitioner further states that the fourth respondent, being aggrieved by the complaint made against him by the petitioner, with the intention of punishing the petitioner, transferred him from the House Keeping Section to Administrative Branch and also sealed the printing and stationery room without giving an opportunity to the petitioner to hand over charge and with the object of harassing the petitioner. Then the fourth respondent had induced the third respondent to issue a charge memo, dated 21.2.2000, containing the following charges:-

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"i. Non-maintenance of accounts for the purchase and issue of printing/stationery articles during the period 1997-98, 1998-99 and 4/99 to 6/99. Consequently he was unable to hand over the charge to the new incumbent.

ii. During June 1999 Shri S.Nayagam, AG II (G) had purchased the stationery articles alone to the tune of Rs.1,00,517/- (Rupees one lakh five hundred and seventeen only) against the total budget allotment of Rs.80,000/- (Rupees eighty thousand only) for the year 1999-2000.

iii. Misappropriation and embezzlement of FCI funds in the purchase of printing and stationery articles.

iv. During the period April 1994 – January 1997 had regularly claimed more than 70 to 80 hours of Overtime Allowance every month amounting to Rs.64,905.20.

v). Alleged that District Manager, Cuddalore does not belong to SC community and also not paid Income Tax properly for the year 1993-94.

vi) Tampered the House Keeping indents submitted by various sections/FSD depots in Cuddalore District.

vii) Disobeyed the posting order when shifted from District Office H.K. Section to Admin. Branch for dealing with PF of staff working at FSD, T.V. Koil."

3. The petitioner had denied all the charges. After an enquiry was held, the enquiry Officer came to the finding that all the charges excepting charge Nos.2 and 4 were proved. Based on the Enquiry Report of the Enquiry Officer, the third respondent herein, imposed the penalty of Rs.15,000/- as fine vide his proceedings No.V&S4(29)/99, dated 29.3.2001. During the enquiry, four witnesses were examined on the side of the petitioner and all of them were holding higher posts than that of the petitioner and all the four witnesses had clearly deposed that the petitioner was in no way responsible for any of the charges leveled against him. The Management had not named any superior officer to be examined during the enquiry. Since they were in favour of the petitioner, they had not been examined. The only witness to depose against the petitioner was the fourth respondent herein who had nurtured a grudge against the petitioner.

4. The petitioner had proposed to prefer an appeal against the order of the third respondent, dated 29.3.2001, levying a fine of Rs.15,000/- against him. However, the third respondent had advised the petitioner that it would be better for him to pay the fine

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amount and that on doing so he would be given immediate orders of promotion to that of Assistant Grade I. Therefore, the petitioner had not preferred an appeal, at that time, against the order of the third respondent, dated 29.3.2001. Instead he had paid the fine amount of Rs.15,000/- in one lumpsum. Following this, the third respondent had issued an order promoting the petitioner to the higher grade of Assistant Grade I. However, aggrieved by the promotion given to the petitioner by the third respondent, the fourth respondent had instigated the second respondent to initiate suo-moto proceedings against the petitioner for enhancing the penalty imposed on the petitioner. Accordingly, the second respondent, by his proceedings No.Vig.5(16)/2001, dated 21.9.2001, issued a show cause notice to the petitioner calling upon him to show cause as to why the punishment imposed upon the petitioner by the third respondent should not be enhanced. On receipt of the show cause notice, the petitioner had submitted a detailed explanation. However, the second respondent, without considering the explanation submitted by the petitioner, issued proceedings No.Vig.5(16)/2001, dated 7.12.2001, imposing as many as four punishments on the petitioner, ordering reversion to the lower post of Assistant Grade III, debarring promotion for a period of five years, bringing down the scale of pay to the minimum of the time scale of Assistant (Grade-III). These punishments were imposed on the petitioner in addition to the fine of Rs.15,000/- which had already been imposed upon him and which the petitioner had earlier paid.

5. It is stated by the petitioner that he had filed a writ petition before this Court in W.P.No.25314 of 2001, challenging the order of the second respondent. By an order, dated 21.12.2001, this Court had disposed of the writ petition permitting the petitioner to avail the appellate remedy. Following the order passed by this Court, on 21.12.2001, the petitioner had submitted an appeal to the first respondent, on 24.1.2002, raising several grounds to show that the punishment imposed on the petitioner is disproportionate to the alleged charges levelled against him and illegal in the eye of law. As directed the petitioner, had appeared before the first respondent, on 31.7.2002, and submitted his explanation in person. However, the first respondent, without considering the explanation submitted by the petitioner, had passed a non-speaking order in his proceedings No.A&R/5(29)/2002/765, dated 19.8.2002. No reasons were assigned while rejecting the appeal.

6. Aggrieved by the said order of the first respondent, dated 19.8.2002, and the earlier order of the second respondent, dated 7.12.2001, the petitioner has preferred the present writ petition.

7. The petitioner had raised several grounds while challenging the impugned proceedings of the respondents including the ground

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that the impugned proceedings have been issued without proper appreciation of the facts and circumstances of the case and without relying on the materials placed before them. Further, the petitioner had raised the ground of malafides against the fourth respondent and also that the punishments could not have been imposed on him including both minor as well as major penalties as per Regulation 54 of the Food Corporation of India (Staff) Regulations, 1971.

8. It is also stated by the petitioner that he had been promoted as Assistant Grade I at the time of imposition of the punishment and by reverting him to the position of Assistant Grade III, the petitioner was being imposed with the penalty of reversion by two stages and that the additional penalty of being placed at the bottom of time scale of pay was also made.

9. On the contrary, respondents 1 to 3 have contended that the third respondent had initiated disciplinary proceedings against the petitioner under the Food Corporation of India (Staff) Regulations, 1971, vide charge memo No.V&S 4(29), dated 21.2.2000. Since the petitioner had denied the charges by his letter, dated 8.3.2000, a Departmental Enquiry was conducted against him based on the charges leveled against the petitioner. On a detailed examination of the materials produced in the Departmental Enquiry, corroborated with the oral testimony of the witnesses, the Enquiry Officer had submitted his report, dated 23.1.2001, to the third respondent (Disciplinary Authority), with the findings that all the charges except charges (ii) and (iv) were proved and a copy of the report was furnished to the petitioner, who in turn had sent his representation, dated 16.2.2001, against the findings of the Enquiry Officer.

10. It is further submitted, on behalf of respondents 1 to 3, that the third respondent (Disciplinary Authority), on a careful consideration of the Enquiry Report and the materials referred therein, as well as on a careful consideration of the representation submitted by the petitioner, had agreed with the conclusion of the Enquiry Officer and imposed a penalty of Rs.15,000/- recoverable in 15 instalments with effect from 1.4.2001, by his order No.V&S 4(29), dated 29.3.2001. The petitioner did not prefer any appeal against the order of the Disciplinary Authority and therefore, the said order had become final.

11. It is further stated by respondents 1 to 3 that the Executive Director (Vigilance) and Chief Vigilance Officer of the Food Corporation of India, New Delhi, had reviewed the vigilance cases in the South Zone of the Food Corporation of India during his official tour in Chennai from 30.7.2001 to 3.8.2001. During the discussion held, it was decided by the second respondent (Zonal

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Manager/Appellate Authority) to suo-moto review the penalty imposed on the petitioner, in exercise of the powers conferred under Regulation 74(4) of the Food Corporation of India (Staff), Regulations, 1971, as the penalty of recovery of partial loss incurred due to the petitioner was considered inadequate and therefore, a notice No.Vig.5(16)/2001, dated 21.9.2001, was issued by the second respondent (Appellate Authority) to the petitioner to show cause why the recovery of Rs.15,000/-, ordered by the third respondent (Disciplinary Authority), should not be enhanced besides issue the other penalties contemplated under Regulation 54 of the Food Corporation of India (Staff) Regulations, 1971. The petitioner vide letter, dated 12.10.2001, made a representation against the proposed action. The second respondent (Appellate Authority), vide order No.Vig.5(16)/01, dated 7.12.2001, after duly considering the representation of the petitioner, came to the conclusion that the petitioner had indulged in impropriety causing huge loss to the Corporation including tampering of records and the recovery of Rs.15,000/- imposed on him by the Disciplinary Authority was not adequate and therefore, he had imposed upon the petitioner the penalty of reversion to the post of Grade III (General), debarring him for promotion for a period of five years from the year 2002 and on reversion, his pay was fixed at the minimum of the time scale of the Assistant Grade III (General). It is also clarified that during the penalty period, the petitioner shall draw annual increments in the Assistant Grade III (General) and the recovery of Rs.15,000/- as ordered by the Disciplinary Authority shall remain unchanged and only after completion of the penalty period, the petitioner will be considered for promotion as per the rules. The petitioner had preferred an appeal under the Food Corporation of India (Staff) Regulations, 1971, before the first respondent, the Managing Director of the Food Corporation of India, New Delhi. After duly considering the submissions made on behalf of the petitioner, the appeal was rejected, vide order No.A&R/5/(29) 2002/765, dated 19.8.2002, stating that there were no sufficient and cogent reasons to interfere with the orders of the second respondent.

12. The fourth respondent had filed a counter denying the contentions raised by the petitioner, and with regard to the malafides, stating that he was examined as a witness against the petitioner only in his capacity of an official of the respondent Corporation. He has also denied the existence of personal animosity between him and the petitioner.

13. On a perusal of the documents filed before this Court, it is found that, based on the Enquiry Report of the Enquiry Officer, dated 23.1.2001, the third respondent had imposed the penalty of recovery of Rs.15,000/- from the petitioner in 15 instalments, with effect from 1.4.2001, invoking the powers delegated under Regulation 56 of the Food Corporation of India (Staff)

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Regulations, 1971, annexure to appendix II, stating that the Article of charges at S.Nos.1,3,5,6 and 7 in the imputation have been proved. It is not in dispute that the petitioner had paid the penalty of Rs.15,000/- imposed on him. It is also seen that, on such payment of the penalty, the petitioner had been considered for promotion to the post of Assistant Grade I (General) and he has also been promoted as such. This is clear from the Office Order No.135/2002/EI., dated 4.3.2002, issued by the Assistant Manager (Estt.I) for Zonal Manager (S) of the Food Corporation of India, Chennai, wherein it is stated that the promotion order issued to Sri.S.Nayagam, the petitioner herein, Assistant Grade-II (General), to Assistant Grade-I (General) vide order reference first cited is hereby cancelled. It is also seen from the Office order No.475/2001/EI, dated 3.12.2001, served on the concerned officials including the petitioner, wherein it is stated that the officials may be relieved immediately and they should report for duty at their place of duty, on or before 20.12.2001, whereas, the cancellation order, canceling the promotion, has been issued only on 4.3.2002 in which the reference first cited is the communication from the Zonal office in O.O.No.475/2001/EI, dated 3.12.2001. Further, the Office Order, dated 4.3.2002, has been addressed to the petitioner herein. In such circumstances, the respondents cannot claim that the petitioner was not promoted to the post of Assistant Grade I (General). Further, it is seen, after the penalty of Rs.15,000/- had been imposed on the petitioner and the petitioner having accepted the penalty and subsequent to the payment made by the petitioner, he had been promoted to the post of Assistant Grade I (General). Further, the claim of the respondents that the amount of Rs.15,000/- paid is only a reimbursement of the pecuniary loss of the Food Corporation of India and not as penalty cannot be accepted, since the order of the third respondent, dated 29.3.2001, clearly states that the said amount of Rs.15,000/- has been imposed on the petitioner as penalty and that it is recoverable in 15 instalments, with effect from 1.4.2001. Imposition of the said penalty has been made as per the delegated under Regulation 56 of the Food Corporation of India (Staff) Regulations, 1971, therefore, it cannot be said to be only a recovery of loss caused to the respondent Corporation.

14. It is also seen that the reversion order, dated 7.12.2001, issued by the second respondent in No.Vig.5(16)/2001 states that the appellate authority having suo-moto powers to review the case of the petitioner under Regulation 74(4) of F.C.I.(Staff) Regulations, 1971, imposed the penalty of reversion to the post of A.G.III (General), debarring the petitioner from promotion for a period of five years from the year 2002 onwards. It also states that on reversion his pay will be fixed at the minimum of the time scale of AG III (G) and recovery of Rs.15,000/- as ordered by the Disciplinary Authority shall remain unchanged. It is clear that

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the earlier penalty of Rs.15,000/- imposed on the petitioner is only a minor penalty. By way of reversing the order by suo-moto proceedings, the second respondent had imposed the major penalty of reversion by two grades on the petitioner from that of Assistant Grade I (General) to that of Assistant Grade III (General) and also placed him at the minimum of the time scale of pay. This would be imposing on the petitioner both minor and major penalties at the same time. In the appeal filed by the petitioner, the first respondent by an order, dated 19.8.2002, in proceedings No.A&R/5 (29)/2002/765, while rejecting the appeal, has merely stated that he has carefully gone through the case records, connected papers and the representation of the petitioner, dated 31.7.2002, and that he found no sufficient and cogent reason to interfere with the orders of the Zonal Manager (South), the Disciplinary Authority and therefore, the Appeal petition was liable to be rejected. No further reasons have been given by the Appellate Authority for arriving at the said conclusion.

15. On a perusal of the documents filed before this Court and in view of the averments made in the affidavit filed in support of the petitioner as well as the respondents and based on the arguments putforth by the learned counsels for both sides and in view of the case laws cited before this Court, this Court is of the considered view that the enhanced penalty imposed on the petitioner by the respondents cannot be sustained, since it is clearly seen that the petitioner had been imposed the penalty of Rs.15,000/- only after the conclusion of the enquiry proceedings and based on the enquiry report submitted by the enquiry officer. Later, by suo-moto proceedings of the second respondent, the penalty has been increased to that of a major penalty of reversion by two grades from that of Assistant Grade I (General) to that of Assistant Grade III (General) and that the petitioner had been placed at the minimum time of scale of pay at the Assistant Grade III (General) level. Further, the enhanced penalty having been confirmed by the order of the first respondent, dated 19.8.2002, this Court is of the view that such a penalty could not have been imposed on the petitioner as held by the the Supreme Court in Union of India & another Vs. S.C.Parashar (JT 2006 (3) SC 162) as follows:

> "12. The penalty imposed upon the respondent is an amalgam of minor penalty and major penalty. The respondent has been inflicted with three penalties: (1) reduction to the minimum of the time-scale of pay for a period of three years with cumulative effect; (2) loss of seniority; and (3) recovery of 25% of the loss incurred by the Government to the tune of Rs.74,341.89p., i.e., Rs.18,585.47p. on account of damage to the Gypsy in 18(eighteen) equal monthly installments. Whereas reduction of time-scale of pay with cumulative effect is

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a major penalty within the meaning of clause (v) of Rule 11 of the CCS Rules, loss of seniority and recovery of amount would come within the purview of minor penalty, as envisaged by clause (iii) and (iii)(a) thereof. The Disciplinary Authority, therefore, in our opinion acted illegally and without jurisdiction in imposing both minor and major penalties by the same order. Such a course of action could not have been taken in law.

16. In such circumstances, the orders passed by the first respondent in proceedings No.A&R/5(29)/2002/765, dated 19.8.2002, and the order of the second respondent in proceedings No.Vig.5(16)/2001, dated 7.12.2001, are set aside and consequently the earlier punishment of imposition of Rs.15,000/- on the petitioner as penalty, by the order of the third respondent, dated 29.3.2001, is allowed to stay. Accordingly, the petitioner is eligible for all the benefits for which he would have been otherwise eligible but for the impugned orders dated 19.8.2002 and 7.12.2001.

The writ petition is allowed. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To

1. The Managing Director
   Food Corporation of India
   Headquarters,
   16-20, Barakhamba Lane,
   New Delhi 110 001

2. The Zonal Manager (South)
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3. The Senior Regional Manager
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4. Deputy Manager
   Mr.P.Vijay Amaladoss
   Food Corporation of India
   zonal Office
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   Chennai - 600 006

1 cc to M/s. Muthumni Doraisami, Advocate, Sr. 27375
1 cc to M./s. Row and Reddy, Advocte, Sr. 27237
1 cc to Mr.P.D.Adikesavalu, Advocate, Sr. 27125

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